

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JAY FOLSE,

Plaintiff,

v.

Civil Action No. 2:22-cv-00171

JOHN MCCUSKEY, JR., in his individual and official capacities;
G. RUSSELL ROLLYSON, JR., in his individual and official capacities;
WALLACE LOONEY, in his individual and official capacities
LISA HOPKINS; in her individual and official capacities
STEPHEN CONNOLLY, in his individual and official capacities;
MICHAEL NUSBAUM, in his individual and official capacities;
KEVIN FOREMAN, in his individual and official capacities,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is the Proposed Findings and Recommendation ("PF&R") of the United States Magistrate Judge Dwane L. Tinsley, entered August 15, 2023. ECF No. 58.

The Magistrate Judge recommended the motion to dismiss of Foreman and Looney (the "Police Defendants"), ECF No. 34, be granted in part, dismissing Folse's § 1983 claims against the Police Defendants in their official capacities in Counts I, II,

III, and VI of the amended complaint and his § 1983 claim for false arrest against the Police Defendants in Count I inasmuch as that claim merged with his malicious prosecution claim in Count III. The Magistrate Judge further recommended the motion to dismiss of defendants McCuskey, Rollyson, Hopkins, Connolly, and Nusbaum (collectively, the "Auditor Defendants"), ECF No. 48, be granted, dismissing Folse's § 1983 claims against the Auditor Defendants in their official capacities in Counts I, II, III, and VI of the amended complaint. The Magistrate Judge further recommended the Auditor Defendants' second motion to dismiss, ECF No. 50, be granted, dismissing Folse's § 1983 claim for false arrest against the Auditor Defendants in their individual capacities in Count I inasmuch as that claim merged with his malicious prosecution claim in Count III.

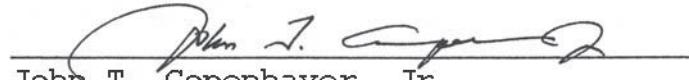
In reviewing the PF&R, the court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Upon the filing of an objection to a PF&R, the court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." Id. Failure to object to a PF&R constitutes waiver of de novo review, in which case the court reviews the PF&R for clear error. See Fed. R. Civ. P. 73 Advisory Committee notes.

No objections having been filed to the PF&R, it is, accordingly, ORDERED that the PF&R of the Magistrate Judge be, and it hereby is, adopted by the court and incorporated herein. It is, therefore, ORDERED as follows:

1. The plaintiff's § 1983 claims against the Police Defendants in their official capacities in Counts I, II, III, and VI of the amended complaint be, and hereby are, DISMISSED.
2. The plaintiff's § 1983 claim for false arrest against the Police Defendants in their individual capacities in Count I be, and hereby is, DISMISSED as moot.
3. The plaintiff's § 1983 claims against the Auditor Defendants in their official capacities in Counts I, II, III, and VI of the amended complaint be, and hereby are, DISMISSED.
4. The plaintiff's § 1983 claim for false arrest against the Auditor Defendants in their individual capacities in Count I be, and hereby is, DISMISSED as moot.

The Clerk is directed to transmit copies of this memorandum opinion and order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

ENTER: September 7, 2023



John T. Copenhaver, Jr.
Senior United States District Judge